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Introduction

1. Switzerland, a small State at the heart of Europe, is a very diverse country whose geography is characterized by contrasts and the distinctive features of the landscape. This natural variety is reflected in Switzerland's rich and productive cultural diversity. The resulting marked differences are an essential element of the Swiss identity.

2. Switzerland's political system and legal structure are the outcome of that geographical and cultural diversity. The Swiss nation is an expression of will, in that the federal State is based, politically and historically, on the resolve of its 26 federated States, known as cantons. Swiss federalism takes account of the federated States' need for independence. For this reason, modern Switzerland is particularly federal in nature. This has enabled it to meet the challenges of the modern world, such as economic upheaval, the interdependence of the community of States, changes in society and environmental protection, on the basis of consensus and peaceful coexistence.

3. This core document presents Switzerland in all its cultural, historical, political and legal diversity. It is based on the United Nations guidelines for the establishment of the first part of State reports. The outline follows that proposed in the guidelines, namely: land and people, general political structure, general legal framework within which human rights are protected[1] and information and publicity.

I. LAND AND PEOPLE[2]

4. The table below presents statistical data on the characteristics of the Swiss population.

Area	41 285 km^2	
Total population	7 164 444	
Population breakdown	5 757 814 1 406 630	Swiss foreigners
Breakdown of the foreign population	1 254 001 46 955 35 446 67 386 2 568 274	from Europe from the Americas from Africa from Asia from Australia and Oceania stateless persons
Percentage of the foreign population compared to the permanent resident population[3]	19.6% (21.4% of the male population and 17.9% of the female population are foreigners)	
Breakdown by sex	48.9% 51.1%	men women

Age	Under 15 years: 17.4% of the entire population (16.6% of the female population and 18.3% of the male population are under 15) Over 65: 15.3% of the entire population (17.8% of women and 12.7% of men are over 65)
Urban population	67.1%
Civil status	42.1% single 46.3% married 5.8% widowed 5.8% divorced (In 1999, there were 40 646 marriages and 20 809 divorces; the divorce rate is rising steadily and if the current trend is maintained, will reach 50% within the next few years).
Languages (1990)	63.7% German 19.2% French 7.6% Italian 0.6% Romansh 8.9% Other
Religion (1990)	46.1% Catholic 40% Protestant 2.2% Muslim 1% Orthodox 0.3% Jewish 0.2% Old Catholic 7.4% None 1.3% Other 1.5% Not stated
Post-neonatal mortality (1998)	4.8 per 1 000 births
Birth rate (1998)	11 children per 1 000 inhabitants
Fertility rate (1998)	1.46
Single parent families (1990)	Total: 83 263 Women: 71 082 Men: 12 181
Life expectancy (1997/98)	Women: 82.5 years Men: 76.5 years
Gross domestic product (1997)	CHF 322 572 million

Average annual per capita income (fixed price, 1997)	CHF 45 330
Inflation rate	1991: 5.9% 1993: 3.3% 1996: 0.8% 1998: 0.0% 1999: 0.8%
Unemployment rate[4]	1997: 4.1% (4.3% men, 3.9% women) 1998: 3.6% (3.2% men, 4.1% women) 1999: 3.1% (2.7% men, 3.5% women) The unemployment rate continues to fall. However, the above figures comprise only people registered with a (regional) employment office.
Illiteracy	According to recent estimates, between 20 000 and 30 000 people can neither read nor write (people unlikely to have received schooling).

II. GENERAL POLITICAL STRUCTURE

A. Historical background

5. The institutions and political organization of twentieth-century Switzerland reflect for the most part the country's 700-year historical heritage. Changes in the form of government have been much more the result of urbanization and superposition as the territory expanded than of upheaval, revolutions or armed conquest. Switzerland has developed as a nation based on political will. Swiss identity, unlike that of the neighbouring States, does not have a national language or uniform cultural or ethnic tradition as its fundamental component; it is based on the political convictions shared by the Swiss population in spite of its different language and cultural traditions. The common denominators are attachment to the values of the federal State, direct democracy and cultural and language diversity. The leitmotiv of regional autonomy runs throughout the Confederation's history. The neutrality exercised by Switzerland since the sixteenth century has helped significantly to maintain the country's multi-cultural internal unity and to protect Switzerland from external aggression.

6. Until the French Revolution, Switzerland was an association of States (the cantons) which united initially in joint defence of their independence against the territorial claims of the Habsburgs, and subsequently to conquer and subjugate certain territories (subject countries). At the time, relations between cantons were not governed by a constitution but by treaties of alliance. The confederate cantons only gradually developed a common policy, as the political and religious differences between them were at first insurmountable.

7. After the occupation of Switzerland by the troops of the Directory in 1798, a unitary Helvetic Republic was established along the lines of the French Republic. The privileges of the suzerain States over the subject countries were abolished and religious and press freedom guaranteed. In 1803, Napoleon Bonaparte put an end to the fight between federalists and centralists by issuing a new constitution, the Act of Mediation, in which Switzerland became a confederation again. The powers of the central Government were limited to foreign policy and the maintenance of law and order and the cantons continued to be sovereign States in all other areas.

8. The 1815 Congress of Vienna recognized Switzerland's independence and neutrality as important factors of European stability (Switzerland's independence from the Holy Roman Empire had been recognized in the 1648 Peace of Westphalia). Switzerland thus resumed the form of an association of 22 largely independent cantons united by a treaty of alliance. It was at that time that the present external borders were established.

9. The French Revolution of July 1830 also unleashed a liberal movement in Switzerland. In 12 cantons, popular movements imposed liberal constitutions founded on the principles of sovereignty of the people and representative democracy. These new constitutions ran contrary to the Federal Pact of 1815; the Pact then had to be revised, with the result that central power was consolidated. The decisive step from a confederation of States to a federal State was taken in the first federal Constitution, in 1848, following the victory of the liberal cantons over the conservative Catholic cantons in a brief civil war (the Sonderbund War). In the midst of the Europe of Restoration monarchies there emerged a State that embodied progressive republican ideas. The Constitution gave the Confederation new powers, in particular in the areas of foreign policy, customs, postal matters, currency and to a certain extent the army. The present organization of the State was established at that time, on the basis of the principle of separation of powers; its bicameral parliamentary system, based on the American model, attempted to strike a balance between centralist and federal tendencies.

10. The complete revision of the Constitution in 1874 strengthened the central power and the rights of citizens to the detriment of the cantons: the Confederation was given authority inter alia over military affairs and social legislation, and the legislative referendum was born. Other signal events in the development of federal law include the 1877 Factory Act (which provided for the inspection of factories, the reduction of working hours and the prohibition of child labour), the 1881 Code of Obligations, the 1907/1912 Civil Code, the 1911 Sickness and Accident Insurance Act, the 1937 Criminal Code and the 1946 Old Age and Survivors' Insurance Act.

11. The system of semi-direct democracy (popular initiative, referendum, parliament) enshrined in the Constitution is an essential factor of peaceful coexistence between the different cultures in that it strengthens the role of the linguistic and political minorities in decision-making processes. The system aims to find compromise solutions that are acceptable to all. This implies, for example, that the national language minorities are duly represented on the executive. Since 1959, the custom has been to assign seats in the national Government in proportion to political parties' strength at the federal level (the "magic formula"). This system, also known as "democracy of concordance", is the result of a long process.

12. Equal rights between men and women were belatedly established. In 1971 women obtained the right to vote at the federal level. Other major steps were the introduction in the Constitution of an article on equality of the sexes in 1981, the recognition of the equal rights of spouses in the new Marriage Act of 1985 and the 1995 Act on Equality Between Men and Women (limited to the field of employment).

13. The creation of Jura as the twenty-sixth canton, approved by the people and the cantons in 1978, is proof of Switzerland's democratic character and its capacity to change itself.

14. The travaux préparatoires for a complete revision of the Federal Constitution started in the mid-1960s. After two failed attempts, a new draft constitution was drawn up in the early 1990s. Based on a broad political consensus, the new version amended the wording and updated the substance of the Constitution, with the aims of furnishing a complete picture of written and unwritten constitutional law and highlighting the characteristic elements of the State. The people and the cantons adopted the new Constitution on 18 April 1999, and it entered into force on 1 January 2000 (the complete text is appended).*

B. Government structure: federalism

15. Switzerland's history and its cultural diversity have made federalism, in the true sense of the term, a necessity: experience has shown that the unity of the State can be guaranteed only if the diversity of the parties which compose it is safeguarded.

1. The Confederation and the cantons

16. The main feature of Swiss federalism is recognition of the sovereignty of each canton. Power-sharing between the central Government and the cantons is thus based on the principle of attribution. Only the powers attributed to it by the Constitution are vested in the Confederation, and the cantons are sovereign insofar as their sovereignty is not limited by the Constitution; as such, they exercise all the rights which are not delegated to the Confederation (art. 3 of the Federal Constitution of the Swiss Confederation of 18 April 1999 [Recueil systématique du droit fédéral (Systematic Compendium of Federal Law) (RS) 101]).

17. With the change to a federal State, the central Government, as a permanent institution, acquired more tasks, making the division of federal and cantonal powers more complex. Nowadays, some fields fall within the general or even exclusive competence of the Confederation. Among them are foreign affairs, customs, monetary policy, postal and telecommunication services, the armed forces and legislation relating to nuclear energy, animal rights, transport (railways, cable cars, shipping, air navigation and space flight) and meteorology. Other sectors, such as religious worship, the police and social welfare, are exclusively within the competence of the cantons.

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* The annexes may be consulted at the Office of the United Nations High Commissioner for Human Rights.

18. In other areas, federal and cantonal legislation coexist and the division of powers is less clear-cut. In many cases, the Confederation legislates and the cantons implement the legislation. This is true for civil law, criminal law, social insurance and road traffic. In yet other areas, such as taxes, sickness insurance and public education, legislative power is shared.

19. Under the federal breakdown of powers, the Confederation has the authority to legislate on occupational training, while public education falls within the exclusive competence of the cantons. This gives rise to major differences between schools from one canton to the next (for example, the number of pupils per class, vacation periods, timetables, etc.).

2. Cantons and communes

20. Communes are the smallest political entity of the federal State. Switzerland has about 3,000 communes of greatly varying sizes. Their independence is guaranteed within the limits set by cantonal legislation (art. 50 of the Constitution). The most salient feature of their autonomy is sovereignty in matters of taxation. Their organization is not uniform; in many communes, power is still exercised by a communal assembly in which all inhabitants who are entitled to vote may take part, whereas larger communes have a communal parliament. Executive authority is vested in the communal council, a collegiate body elected in most cases by direct popular vote.

21. The population is very active in the life of the commune. Swiss democracy is therefore characterized by a remarkably dynamic local political, social and cultural life. The manifestations of local democracy include political parties, voluntary associations and societies, cultural events, festivals, exhibitions and concerts, and the existence of exceptionally high numbers of libraries and museums.

22. In the hierarchy of the State, which goes from the commune (lowest level) to the Confederation (highest level), the cantons are in the middle and are thus the linchpin of the country's political structure.

23. Switzerland has 26 cantons. The youngest was created in 1978 by a constitutional amendment in which the people and the cantons accepted the establishment of the canton of Jura, whose territory had until then been subject to the sovereignty of the canton of Bern.

24. Each canton has it own constitution and legislation. Legislative power is exercised by a unicameral parliament usually elected by proportional representation. Executive and administrative power is vested in a "State council" or "executive council" elected by the people for a specific period of time and organized according to the same principles as the Federal Council: the President changes each year and collegiality is the rule. It should nevertheless be noted that in Appenzell Inner-Rhoden elections of the government and cantonal judges and in Glarus elections of lower-ranking judicial officials take place by show of hands, as does any vote on a cantonal issue, at citizens' assemblies known as Landesgemeinde.

25. Women obtained the right to vote at cantonal level between 1959 and 1990 (at federal level in 1971). In August 1999, 24.1 per cent of cantonal parliamentarians were women, and women made up 20.4 per cent of cantonal governments. A woman was first elected to a cantonal government in 1983.

26. The cantons are sovereign with regard to organization of the courts. Cantons' judicial systems are usually headed by a supreme court (known as the Cantonal Court), which is a court of appeal against civil and criminal judgements and a court of cassation. According to article 98 (a) of the Federal Supreme Court Organization Act (OJ) of 16 December 1943 (RS 173.110), each canton must establish an administrative court for the application of the Confederation's public law. Consequently, appealable administrative decisions are submitted either to the cantonal administrative court or to independent appeal commissions. In addition, according to article 29 of the new Federal Constitution, every person has the right in legal or administrative proceedings to have their case treated fairly and settled within a reasonable time. Article 30 of the Constitution provides that everyone whose case must be judged in court proceedings is entitled to have that done by a court that is established by law, has jurisdiction, and is independent and impartial.

27. Citizens' political rights are broader at the cantonal than at the federal level. Cantonal governments are directly elected by the people and in a number of cantons the law, unlike federal law, recognizes not only the right of constitutional initiative but also a right of legislative initiative whereby citizens may, if sufficiently numerous, put forward for acceptance by popular vote new legislation or amendments to existing laws. Optional and mandatory referendums (for example, on taxation and administrative matters) also exist at cantonal level.

3. Organization of federal powers

(a) The executive: the Federal Council

28. The Federal Council is a collegial government composed of seven members who have equal powers. Each member is elected independently by the Federal Parliament for four years; he or she may be re-elected indefinitely. In practice, re-election is the rule, thus ensuring the continuity and stability of Swiss policy, particularly as neither the Federal Council nor any of its members may be deposed by Parliament. This principle is reflected in the saying, "the Federal Council yields, but does not resign".

29. Each year, the Federal Assembly (meeting in joint session) chooses one of the seven Federal Councillors as President. As a mere primus inter pares, he or she does not have any special powers. The President's main role is to chair meetings of the Government and to discharge representation duties.

30. Each Federal Councillor is the head of a department (ministry), whose interests he or she represents in the Government. As a collegial body, the Federal Council takes its decisions only by consensus or by a simple majority, and each member assumes responsibility for joint decisions.

31. The composition of the Federal Council represents a subtle linguistic, religious, regional and political balance. Traditionally, the Latin (French and Italian) minority always has at least two representatives on the Council and the large cantons (Zurich, Bern and Vaud) are in principle represented on it. Since 1959, a political compromise known as the "magic formula" has ensured the country's four largest political parties, i.e. the Radicals, Christian Democrats and Socialists (two representatives each) and the Democratic Union of the Centre (one representative), a permanent place in the Federal Council.

32. Between 1848 and 1984, the Federal Councillors were all men. The first woman Federal Councillor was elected in 1984 (and held office until 1989). The second was elected in 1993 and the third in 1999.

33. The Federal Council exercises traditional executive functions (art. 174 and arts. 180 et seq. of the Constitution). It is in charge of the country's development and political management, ensures the maintenance of law and order and is the guardian of external and internal security. It monitors respect for and implementation of the Constitution, legislation and the judgements of the Federal Supreme Court and, as appropriate, takes the necessary measures for their enforcement. In the few areas in which the Federal Supreme Court does not have jurisdiction under the Constitution, the Federal Council is the supreme appeal authority. Its role as head of State makes it the representative of Switzerland abroad and the guardian of the Confederation's interests; it also ratifies the international treaties adopted by the Federal Chambers. It should be noted that some treaties may be concluded without parliamentary approval, namely treaties which the Federal Council may conclude on the basis of a delegation of authority stipulated in an act of law or international treaty, and treaties of limited scope.

(b) Legislative power: the Federal Assembly

34. Switzerland's bicameral parliamentary system is the direct result of federalism. The Council of States and the National Council comprise the Federal Assembly. The Council of States is composed of 46 deputies, or two per canton (the half-cantons having one seat each), regardless of the canton's size and population. The National Council is composed of 200 people's deputies divided among the cantons in proportion to the sizes of their populations. Although the way the councillors are elected to the Council of States is decided by each canton (most have opted for a majority vote), the members of the National Council are uniformly elected by proportional representation.

35. Women have had political rights at the federal level since 1971. The proportion of women on the National Council, which was 5 per cent in 1971, rose to 23.5 per cent after the 1999 elections. On the Council of States, 19.6 per cent of the councillors are women.

36. A parliamentary term of office lasts four years. The chambers hold four regular sessions each year. Both chambers have the same rights and no draft statute or ordinance can be considered adopted unless approved in identically worded form by each of them. If a draft gives rise to differences of opinion between the chambers, the text is shuttled back and forth between them until the differences have been resolved; if differences persist after three such exchanges,

the relevant committee members from each chamber meet in a conciliation conference. If they cannot reach consensus, the draft is defeated. The chambers also have the power to authorize the Federal Council to ratify international treaties (see para. 33 above).

37. The Federal Assembly, meeting in joint session, elects the Federal Councillors, the President and the Chancellor of the Confederation, the federal judges and, in time of war, commander-in-chief of the armed forces. The National Council and the Council of States also deliberate in joint session to rule on jurisdictional disputes between the highest federal authorities and on petitions for pardon (Federal Constitution, art. 157).

38. The date of entry into force of any legal instrument is usually set during the final vote by the chambers. The chambers can also leave that decision to the Federal Council. However, referendums must be held within 100 days of being announced in the Feuille fédérale (Official Gazette). Since 1874 the Constitution has provided for the right of optional referendum. Thus, if, within 100 days of the adoption of an act by the Federal Assembly, 50,000 valid signatures are collected from enfranchised citizens who would like it to be submitted to popular approval, the act has to be voted on by the people and cannot enter into force unless a majority of the persons voting so decide. Such a vote must also be held if requested by at least eight cantons (ibid, art. 141). Consequently, legislation can only enter into force after the 100-day referendum period. The optional referendum procedure is applicable to international treaties which are not subject to denunciation and are concluded sine die, which provide for membership of an international organization or which entail multilateral unification of law (ibid, art. 141, para. 1 (d)). Constitutional amendments and membership of collective security organizations or supranational communities are subject in all cases to the dual consent of the people and the cantons, as is urgent federal legislation which has no constitutional basis and whose validity exceeds one year (mandatory referendum under art. 140, para. 1 (c), of the Constitution). Such legislation must be put to the vote within one year after its adoption by the Federal Assembly (ibid, art. 140, para. 1 (c), in fine).

39. Since 1891, the Constitution has also recognized the right of proposal by popular initiative of partial amendment of the Constitution (ibid, arts. 138 et seq.). For this purpose, 100,000 citizens' signatures must be collected within a period of 18 months. Parliament cannot prevent the submission of a popular initiative to the vote, but may declare an initiative inadmissible or null and void if it does not meet the requirements of unity of form and of subject matter or breaches peremptory norms of international law. Since such an initiative can only relate to constitutional amendments, it must be approved both by the people and by the cantons to be adopted.

(c) The judiciary: the Federal Supreme Court

40. The Federal Supreme Court is the country's highest judicial authority. It is composed of 30 judges and 15 associate judges (OJ, art. 1, para. 1). Fifteen other associate judges work on the basis of different federal decisions. The Federal Supreme Court sits in Lausanne. The Federal Insurance Court, which is an independent social insurance court made up of nine regular and nine associate judges (OJ, arts. 122 and 123, para. 1), sits in Lucerne. Within the Federal

Supreme Court, there are two public law divisions and two civil law divisions, a debt execution and bankruptcy law chamber, an indictment division, a federal criminal court and a court of criminal cassation.

41. The Federal Supreme Court guarantees respect for federal law not only in criminal, civil and administrative matters, but also in constitutional matters in that public law remedies are available for violations of constitutional rights by cantonal acts. In ruling in last instance on the decisions of the cantonal courts referred to it, the Federal Supreme Court helps to ensure that cantonal laws are in keeping with federal law and that federal law is uniformly applied. The Federal Supreme Court is duty-bound to apply federal and international law (Constitution, art. 191).

III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

A. Competent human rights authorities and remedies available to a person who claims that his rights have been violated

42. The federal structure implies the complex overlapping of the powers of the Confederation and the cantons. While criminal and civil law (including commercial law) are unified, their enforcement is primarily the responsibility of the cantons, which are sovereign to decide on judicial organization and, to a large extent, procedure. The amendment to the Constitution of 12 March 2000 (relative to arts. 122, para. 1, and 123, para. 1) nevertheless allows the Confederation to unify civil and penal procedure. Administrative law may be either cantonal or federal. In general, human rights violations are actionable in Switzerland in the ordinary civil, criminal, administrative or constitutional courts.

1. Criminal matters

43. Although substantive criminal law was for the most part unified by the Swiss Criminal Code of 21 December 1937 (CPS, RS 311.0) - which has been amended several times and the text of which is appended - criminal procedure is largely the responsibility of the cantons. Switzerland thus has 26 different systems of criminal justice. A federal code of criminal procedure is being prepared. The following presentation only describes the main features of procedure that are the same for all the cantons.

44. The system of criminal justice comes into play when an offence is discovered by, or reported to the competent authority (usually the police). The authority then has to institute criminal proceedings and start an investigation. Depending on the rules applicable in the canton concerned, the police investigate the matter to varying degrees before handing it over to the examining instance. Failing adequate evidence, the proceedings are terminated. The examining authority has to identify the constituent elements of the offence and decide whether the accused should be placed in pre-trial detention. If there is insufficient evidence, the case is dismissed. If there is sufficient evidence, the examining authority brings charges. From then on, the courts of

first instance and, on appeal, the cantonal courts of cassation have jurisdiction to determine the guilt of the accused and, as appropriate, the penalty to be imposed. The Federal Supreme Court's court of cassation rules in final instance.

45. Some serious offences (such as cases of high treason or offences involving the use of explosives) are exclusively within federal jurisdiction (CPS, art. 340). The Federal Criminal Court applies the Federal Criminal Procedure Act of 15 June 1934 (RS 312.0). Appeals are heard by the Federal Supreme Court's special court of cassation.

46. Serving members of the military and officials and employees of the Confederation and the cantons whose acts relate to national defence, and civilians guilty of offences against international public law during an armed conflict are subject to military law and the military courts, provided that acts in question are punishable under the Military Criminal Code of 13 June 1927 (CPM, RS 321.0). These are not, however, a special law or special courts (formal basis in the military criminal procedure of 23 March 1979, PPM, RS 322.1), since the procedure followed is very similar to that of the courts of general jurisdiction. The regular Criminal Code and the Military Criminal Code contain many identical provisions, including the rule against racial discrimination adopted in 1994 (CPS, art. 261 bis and CPM, art. 171 (c) respectively). The persons mentioned above may be tried by civil courts for offences not covered by the Military Criminal Code.

47. The criminal law applicable to children and adolescents is, like that applicable to adults, set forth in the Swiss Criminal Code (General Provisions, section IV). The cantons designate the authorities which are competent to deal with children and adolescents and the procedure to be followed (CPS, arts. 369-371). Decisions made by a cantonal authority may be appealed to the Federal Supreme Court's court of cassation. The Criminal Code is currently being amended, and the provisions of criminal law concerning children and adolescents will subsequently be separate from those concerning adults.

48. Since the adoption on 22 March 1974 of the Federal Administrative Criminal Law Act (DPA, RS 313.0), the federal administration has jurisdiction to investigate and try offences against the penal provisions of the Confederation's administrative laws. However, whenever the department concerned is of the opinion that there should be a penalty or a term of imprisonment, the case file is transmitted to the cantonal prosecutor's office for the attention of the competent court. Any person affected by a criminal ruling by the federal administration may ask to be tried by a court.

2. Civil matters

49. Jurisdiction in this regard belongs in first instance to the district courts, which apply cantonal procedure. On appeal, disputes are settled by the cantonal courts and the Federal Supreme Court (application for annulment). According to article 41, paragraph 1 (b), of the OJ, the Federal Supreme Court is subject to the exceptions mentioned in that article, the only body competent to hear civil actions brought by private individuals or communities against the Confederation when the value in dispute is at least 8,000 Swiss francs. Other disputes may also be referred to it in sole instance, but only with the express agreement of the parties (ibid, arts. 41, para. 1 (c) and 42). In such cases, the Federal Supreme Court applies the Federal Civil

Procedure Act of 4 December 1947 (RS 273). If the Federal Supreme Court does not have jurisdiction, civil actions against the Confederation are brought before the cantonal courts, unless federal law provides otherwise (OJ, art. 41, para. 2).

3. Administrative matters

50. At the cantonal level, decisions taken by the government may usually be appealed to an executive body, an independent appeals commission or an administrative tribunal. The cantons must designate judicial authorities as last cantonal instances when such instances' decisions are directly appealable under administrative law to the Federal Supreme Court.

51. When decisions, whether taken by a cantonal or a federal authority, are based on federal law, they are in principle appealable under administrative law to the Federal Supreme Court as the court of last instance. Articles 99 to 102, of the OJ, however, rule out this possibility for certain disputes; they are of the exclusive jurisdiction of the Government and, in last instance, the Federal Council. There are, however, federal appeals commissions whose decisions are final, for example the Swiss Commission on Applications for Asylum.

4. Violations of fundamental rights

52. In addition to the above-mentioned administrative-law remedy, the main legal remedy available to a person claiming that his fundamental rights have been violated is a public-law appeal to the Federal Supreme Court. This remedy, which is of a subsidiary nature, since it is inadmissible if other remedies are possible, including an action for annulment filed with the Court of Criminal Cassation, civil actions for annulment and administrative-law appeals, is intended mainly as a means of appealing decisions taken by cantonal authorities at last instance and cantonal rulings on violations of constitutional rights and directly applicable provisions contained in international human rights treaties.

53. The relevant provisions of the OJ read as follows:

"Article 84

1. Cantonal decisions or judgements may be appealed to the Federal Supreme Court on the grounds of violation of:

   (a) Citizens' constitutional rights;

   (b) [...]

   (c) International treaties, except as regards violation by a cantonal decision of their civil-law or criminal-law provisions;

   (d) [...]

2. [...]

Article 85

The Federal Supreme Court also hears:

(a) Appeals regarding: citizens' right to vote; cantonal elections and ballots [...];

(b) [...]

Article 86

1. Public-law appeals may only lie against decisions made by the cantonal last instance.

2. [...]"

54. When carrying out its duties, the Federal Supreme Court must take account of a significant restriction: article 191 of the Constitution requires it to apply federal legislation and international law. This provision is of democratic intent, since it is designed to prevent a court from declaring unconstitutional a text that has been submitted to an optional popular referendum and accepted, even tacitly, by the people. While it does not preclude the Federal Supreme Court from ruling that a federal law is incompatible with the Constitution and calling on legislative to remedy the situation, it would be true to say that there is no full federal constitutional monitoring.

55. If the European Court of Human Rights finds that Switzerland has breached the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (ECHR, RS 0.101) or the protocols thereto, the author of the complaint can, under article 139 a of the OJ, ask for the revision of a Federal Supreme Court judgement. The relevant article reads as follows:

"Article 139 a

1. A request for revision of a judgement of the Federal Supreme Court or of a decision of a lower authority shall be admissible if the European Court of Human Rights or the Committee of Ministers of the Council of Europe has recognized an individual application regarding violation of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 or of the protocols thereto as well-founded and reparation can only be obtained through such revision.

2. [...]

3. The cantonal authority is obliged to consider the request for revision even if cantonal law does not provide for the above ground for revision".

56. The Federal Administrative Procedure Act of 20 December 1968 (RS 172.021, art. 66, para. 1 (b)), the Federal Criminal Procedure Act (art. 229, para. 4), and the Federal Military Criminal Procedure Act (PPM, art. 200, para. 1 (f)) also contain provisions in this respect.

B. System of compensation and rehabilitation of victims of rights' violations and offences

57. A person who considers that his rights have been violated may take legal action on the basis of the remedies described above and the procedures and judicial organization of the canton concerned.

58. Civil actions and appeals against administrative decisions are usually intended to obtain compensation for loss or injury (restitution, annulment of the administrative decision, damage, reparation for a non-pecuniary injury) or a determination that the rights in question have been violated (action for a de jure determination). In principle, civil actions against the public authorities come under ordinary law; however, the cantons are free to enact special laws on the accountability of cantonal authorities. As seen above, the Federal Supreme Court has sole competence to hear civil actions against the Confederation when the value in dispute is at least 8,000 Swiss francs (see above, para. 49). There are special federal laws relating to the responsibility of the public authorities, such as the federal law of 14 March 1958 on the liability of the Confederation, the members of its authorities and its officials (Liability Act; RS 170.32), the federal law of 28 March 1905 on the civil liability of railways and steamship companies and the Postal Service (RS 221.112.742), and the federal law of 18 March 1983 on civil liability in matters relating to nuclear energy (LRCN; RS 732.44).

59. In criminal cases, the possibility of bringing criminal indemnification proceedings enables the victim of an offence or crime to take part in the proceedings in order to assert his civil rights.

60. When the guilty act was committed by a public official, the official's personal liability and that of the State may be engaged. For reasons of solvency, Swiss law allows the victim or his assigns to take proceedings directly against the Government. In some cases, it even obliges the victim to do so (Liability Act, art. 3).

61. In military cases, when the offence is punishable under the Military Criminal Code, articles 163 and 164 of the PPM enable the injured party to request compensation from the military courts.

62. The federal Assistance to Victims of Offences Act, adopted on 4 October 1991 (LAVI; RS 312.5), governs assistance for the victims of criminal offences. Its purpose is to provide effective assistance to the victims of direct violations of their bodily, sexual or mental integrity as well as to their families. The Act provides that assistance may include counselling by public or private consultation centres, the protection of the victim and his rights in criminal proceedings against the presumed perpetrator (for example, measures to protect the victim's character, procedural rights and right to submit criminal indemnity claims) and, in some circumstances, pecuniary or non-pecuniary compensation by the canton concerned.

C. Constitutional protection of fundamental rights

63. The Federal Constitution contains a catalogue of fundamental rights. Those rights are all actionable.

64. The Constitution expressly provides for:

- Human dignity (art. 7);
- Equality before the law (art. 8);
- Fair treatment and observance of the principle of good faith (art. 9);
- The right to life and personal freedom (art. 10);
- The protection of children and young people (art. 11);
- The right to aid in distress (art. 12);
- The right to privacy (art. 13);
- The right to marriage and a family (art. 14);
- Freedom of religion and conscience (art. 15);
- Freedom of opinion and information (art. 16);
- Freedom of the media (art. 17);
- Freedom of language (art. 18);
- The right to primary education (art. 19);
- Freedom of science (art. 20);
- Freedom of art (art. 21);
- Freedom of assembly (art. 22);
- Freedom of association (art. 23);
- Freedom of domicile (art. 24);
- Protection against expulsion, extradition and refoulement (art. 25);
- The right to property (art. 26);

- Economic freedom (art. 27);
- Trade union freedom and the right to strike (art. 28);
- Due process (art. 29);
- Specific guarantees regarding legal proceedings (art. 30);
- Guarantees regarding deprivation of liberty (art. 31);
- The right to a fair trial (art. 32);
- The right of petition (art. 33);
- Political rights (art. 34).

65. Fundamental rights must be realized throughout the legal system (Constitution, art. 35, para. 1). Any restriction of a fundamental right must have a legal basis. Grave restrictions must be set forth in the law, except in cases of clear and present danger. Any restriction of a fundamental right must be justified by public interest or serve to protect the fundamental rights of other persons and must be in proportion to the goals pursued. In addition, the essence of fundament rights is inviolable (art. 36 of the Constitution).

66. Since each canton has its own constitution, lists of fundamental freedoms also exist at the cantonal level. The Federal Supreme Court regards them as unquestionable only in the very rare case where the protection they offer goes beyond that afforded by written or unwritten federal constitutional law.

67. It should also be noted that, when they ensure better protection of the individual, the substantive provisions of the ECHR supplement the above-mentioned constitutional rights. The material provisions and the rights relative to constitutional freedoms are directly applicable. They are binding on legislators, the courts and the administrations of the Confederation and the cantons, and citizens may invoke them directly.

68. Switzerland has ratified other human rights treaties. The instruments for the application of those treaties are in some cases less effective than those of the ECHR. The direct applicability of the rule concerned determines the extent to which violations of those treaties can be invoked before the national courts, in particular by public-law appeal. Articles 6 to 27 of the International Covenant on Civil and Political Rights of 16 December 1966 (RS.0.103.2) guarantee, for example, traditional human rights. Those rights are directly applicable and treated by the Federal Supreme Court in the same way as the rights enshrined in the ECHR. On the other hand, the Federal Supreme Court presumes in many cases that the international obligations arising from membership in international treaties tend to be more programmatic, that they need to be elaborated and enacted by legislators and that they do not in principle establish individual rights that can be invoked before the courts (see below, section E).

69. However, article 165 of the Constitution provides that federal legislation that has no constitutional basis may, in the event of need, be declared urgent and put into force immediately and that legislation so implemented must be approved by the people and the cantons within one year of its adoption by parliament.

70. The object of this provision is to strike a balance between the need to implement legislation without delay and concern to limit the resultant restriction or infringement of democratic rights, in particular fundamental freedoms.

71. The principle known as "general police power" constitutes an exception to the rule that any restriction on the exercise of an individual freedom must have an explicit legal basis. As legislators cannot foresee all the threats to security and law and order and are therefore not able to draw up rules to protect against them, the Federal Supreme Court recognizes that the executive is authorized, on the basis of general police power, to take, even in the absence of any legal basis, the measures required to re-establish law and order during serious disturbances or to protect it from clear and present danger. Article 185 of the Constitution gives the Federal Council jurisdiction to promulgate orders and urgent police decrees. In order to prevent abuses and any violation of the principle of the rule of law, the Federal Supreme Court carefully monitors the way that power is used. In addition, the period of validity of the orders and urgent police decrees is strictly limited (Constitution, art. 185, para. 3).

72. Any derogation from fundamental freedoms must be in keeping with, since 1974, the requirements of article 15 of the ECHR or, since 1992, article 4 of the International Convention on Civil and Political Rights.

D. Incorporation of international human rights instruments into internal law

73. Switzerland is a country with a monist tradition: an international treaty ratified by the Federal Council forms part of federal law from the time of its entry into force for Switzerland without need for it to be incorporated in the internal legal system through the adoption of a special law. This principle may be deduced on the one hand from article 191 of the Constitution, which provides that in all cases the Federal Supreme Court shall apply federal law and international law, and on the other from article 189, paragraph 1 (c), of the Constitution, which, within the framework of constitutional jurisdiction, also governs appeals in the event of violations of international treaties.

74. The Federal Supreme Court has, in its recent decisions, often recognized the primacy of public international law over internal law. As a result, a provision of internal law is not applicable if it violates international law. The Federal Supreme Court considers that it is all the more imperative to settle disputes in this manner when the primacy arises from a rule of international law aimed at protecting human rights. This is also the official position of the Federal Council (see the joint opinion of the Federal Office of Justice and the Public International Law Division on the relationship between international and internal law in the Swiss legal system, dated 26 April 1989, appended).

75. The international treaties ratified by Switzerland with regard to human rights and fundamental freedoms may be consulted at www.bk.admin.ch/ch/f/rs/0.10.html.

E. Direct invocability of the provisions of human rights instruments in national courts

76. As already pointed out, an international treaty adopted by parliament constitutes an international obligation for the contracting parties as soon as the instruments of ratification have been exchanged. The treaty thus takes effect not only internationally but also internally, meaning that it immediately becomes part of Swiss law and is immediately binding on the authorities. In addition, the provisions of an international treaty may be directly invoked by citizens in the courts and constitute the basis for the decisions taken by the authorities if they are self-executing. This presupposes that the provision of international public law thus invoked has a sufficiently clear and tangible content to form the basis for a decision. Provisions that are not directly applicable must be elaborated and given appropriate form by the legislature (see above, para. 68).

77. In the final analysis, the courts decide whether in a given case such a provision or treaty is self-executing.

F. National institutions and agencies with responsibility for guaranteeing respect for human rights

78. There are various official bodies at the federal and cantonal levels whose responsibilities relate to the protection of human rights in specific areas. Particular reference should be made to the following federal extra-parliamentary commissions: the Federal Commission on Foreigners, the Federal Commission on Refugees, the Federal Commission on Women's Issues, the Federal Youth Commission, the Federal Commission against Racism and the Federal Commission for the Coordination of Family Issues. In addition, the Federal Department of the Interior's Office for Equality Between Women and Men has counterparts in many cantons, and the Federal Department of Foreign Affairs has specialized human rights divisions. The above-mentioned official bodies are not empowered to take direct action before the courts or against the perpetrators of human rights violations.

79. The cities of Bern, Zurich and Winterthur and the cantons of Zurich, Basel-Town and Basel-Country have "ombudsmen" to provide assistance to private individuals in their relations with the administration. The responsibilities of the Federal Commission against Racism include informing citizens about the legal remedies available to them in disputes with the federal administration, elucidating incidents and attempting conciliation, but the Commission does not have any decision-making power.

80. In general, respect for and protection of human rights is the responsibility of all public authorities, both cantonal and federal, and in particular of the police and the courts.

IV. INFORMATION AND PUBLICITY

81. When the Federal Council plans to ratify a convention, it sets in motion a procedure for consultation with the main interested circles (cantons, political parties, universities, non-governmental organizations, etc.). On this basis, it decides whether it should propose that parliament should adopt the treaty. If need be, it issues a message for the attention of the Federal

Assembly on the scope and consequences of such a commitment. This message is published in the Feuille fédérale (the Official Gazette of the Confederation) and is thus accessible to interested members of the public. The parliamentary debates on the question are public and publicized through the media; apart from these debates, the ratification of a convention is often the topic of discussion in meetings, workshops and seminars organized by universities and schools.

82. Upon ratification, every convention, including those relating to human rights, is published in the Recueil officiel des lois fédérales (Official Compendium of Federal Laws) and in the Recueil systématique du droit fédéral (Systematic Compendium of Federal Law) in the three official languages, German, French and Italian. Certain treaties are also translated into the fourth national language, Romansh. The treaties are therefore known to the competent authorities and easily accessible to all citizens.

83. In view of their importance, some texts are given special publicity. This was the case of the Universal Declaration of Human Rights, which was published in the Feuille fédérale as an annex to the 1982 report on Swiss human rights policy and translated into the fourth national language. It was also the case for the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, which was published in 1988 in the Feuille fédérale (in the three official languages) to mark the fortieth anniversary of the Universal Declaration of Human Rights.

84. Account should also be taken of the crucial role of non-governmental organizations, several of which receive financial assistance from the Confederation, in the dissemination of human rights conventions in Switzerland and abroad through publications, seminars and public awareness campaigns.

85. Reports to be submitted to human rights treaty monitoring bodies are prepared by the federal administration in cooperation with the federal and cantonal authorities concerned, under the coordination of the Public International Law Division of the Federal Department of Foreign Affairs, the Federal Office of Justice of the Federal Department of Justice and Police, the Office for Equality Between Women and Men of the Federal Department of the Interior or the State Secretariat for Economic Affairs of the Federal Department of Economic Affairs.

86. If the reports have not been the object of public debate before their presentation, the opinion of interested circles (including parliamentary commissions) is often requested. In addition a federal law on transparency is under preparation.

87. The results of the consideration of Swiss reports by the competent international bodies are published, thus making a contribution to public debate on the situation, changes and problems with regard to the protection of human rights in Switzerland.

88. Lastly, much information and many official documents may be consulted on the Internet (www.admin.ch).

Notes

[1] In Switzerland, the French expression "droits de l'homme" continues to be used, in accordance with international human rights treaties, in the Federal Constitution (art. 54, para. 2), in legislation and in official documents. However, Switzerland reserves the right to use, in certain documents, expressions corresponding more closely to the requirements of equality of the sexes. Thus, in this document, references to official documents will use the term "droits de l'homme", whereas the term "droits humains" will be used for general references.

[2] The figures in this section come from the Swiss Federal Statistical Office. As a rule, the most recent data available were used, in this case those as at 31 December 1999. Certain figures come from other sources, in particular the most recent census in 1990; they have been specially marked. The next census will start on 5 December 2000.

[3] The permanent resident population is made up of all persons resident on Swiss territory throughout the calendar year. Seasonal workers, border workers, tourists and asylum-seekers are not included.

[4] As defined in International Labour Office recommendations.